IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9266 OF 2005

Sakharam L. Jadhav ....Petitioner

V/s.

Sawliram N. Jadhav ....Respondent

Ms.P.P. Tendulkar i/b Mr.M.S. Karnik for the Petitioner.

Mrs.Smita Gaidhani for Respondent No.2.

CORAM : R.M. SAVANT, J.
DATED : 7TH JUNE, 2007.

P.C. :

1. This Petition filed under Article 227 of the Constitution of India impugns the order dated 3.12.2005 passed by the learned Civil Judge (J.D.), Nashik-Road. By the said order the Petitioner's application numbered as Exhibit 22 for setting aside (no written statement) order, came to be rejected.

2. The said rejection was on the ground that despite the service of summons on the Petitioner herein, the written statement was not filed within the time stipulated in order VIII rule (1) of the C.P.C. and no proper justification as to why the said written

statement was not filed within the stipulated time has been given.

3. The Petitioner has amended the Petition by adding paragraphs 8(k) and 8(l) wherein the reasons for not filing the written statement have been cited. In my view, the Petitioner ought to have cited the said reasons before the trial Court.

4. The learned counsel appearing on behalf of the Petitioner submits that liberty may be granted to the Petitioner to make a fresh application setting out the reasons as to why the written statement could not be filed within the stipulated time. The Petitioner is therefore granted liberty to make a fresh application for setting aside the no written statement order dated 14.3.2006. The learned counsel for the Petitioner further states the the said application will be made within two weeks from date. If such an application is made, the same would be disposed of by the trial Court on its own merits within one month thereafter. The Respondent No.2 herein would be entitled to oppose the said application on such grounds as permissible in law. The interest of justice would also be served if the Petitioner is directed to pay costs of Rs.5000/- to the Respondent

No.2. The said costs to be paid within two weeks from date. The application to be taken up for hearing only after the Petitioner produces evidence of having paid the said costs.

5. In the light of the above, the learned counsel for the Petitioner craves leave to withdraw the above Petition. The Petition is dismissed as withdrawn.

(R.M. SAVANT, J.)